

AF 1/2704  
2677  
#13

PTO/SB/21 (08-03)

Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL  
FORM

(to be used for all correspondence after initial filing)

Application Number	09/363,456
Filing Date	July 29, 1999
First Named Inventor	W. Benman
Art Unit	2671
Examiner Name	H. Cao
Attorney Docket Number	Virtual-2

RECEIVED

APR 08 2004

Technology Center 2600

Total Number of Pages in This Submission

16

## ENCLOSURES (Check all that apply)

- Fee Transmittal Form
- Fee Attached
- Amendment/Reply
  - After Final
  - Affidavits/declaration(s)
- Extension of Time Request
- Express Abandonment Request
- Information Disclosure Statement
- Certified Copy of Priority Document(s)
- Response to Missing Parts/Incomplete Application
- Response to Missing Parts under 37 CFR 1.52 or 1.53

- Drawing(s)
- Licensing-related Papers
- Petition
- Petition to Convert to a Provisional Application
- Power of Attorney, Revocation
- Change of Correspondence Address
- Terminal Disclaimer
- Request for Refund
- CD, Number of CD(s) \_\_\_\_\_

- After Allowance communication to Group
- Appeal Communication to Board of Appeals and Interferences
- Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
- Proprietary Information
- Status Letter
- Other Enclosure(s) (please identify below):  
-Postcard

Remarks

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name

William J. Benman

Signature

Date

March 22, 2004

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name

Yasmin Emerson

Signature

Date

March 22, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**APPEAL NO:**

In re Application of  
W. Benman  
Serial No.: 09/363,456  
Filed: July 29, 1999  
For: SYSTEM AND METHOD FOR  
EXTRACTING IMAGES WITHOUT  
MONOCHROMATIC BACKGROUND

**RECEIVED**  
APR 08 2004  
Technology Center 2600

**APPELLANT'S REPLY BRIEF**

William J. Benman  
2049 Century Park East, Suite 2740  
Los Angeles, CA 90067  
(310) 553-2400



Virtual-2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of  
W. Benman  
Serial No.: 09/363,456  
Filed: July 29, 1999  
For: SYSTEM AND METHOD FOR  
EXTRACTING IMAGES WITHOUT  
MONOCHROMATIC BACKGROUND

:  
: Group Art Unit: 2671  
: Examiner: H. Cao  
: Date: March 22, 2004

**RECEIVED**

APR 08 2004

**APPELLANT'S REPLY BRIEF ON APPEAL** Technology Center 2600

Honorable Assistant Commissioner  
for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant herein files a Reply Brief in response to the Examiner's Answer filed January 21, 2004 as follows:

**REPLY**

For the most part, Appellant relies on the arguments set forth in Appellant's Brief. However, Appellant respectfully submits that the following should be considered with respect to the Examiner's Answer.

Firstly, in Paragraph 11(1) of the Answer, the Examiner suggests that inasmuch as Applicant's Specification shows the use of a subtractor 22 (and other elements) and the resulting images are (according to the Examiner) equivalent, Parulski teaches means for performing a pixel-by-pixel comparison.

However, there are several shortcomings inherent in this position. First, the Examiner's position is based on the embodiment of Fig. 1, an alternative embodiment which is the subject of Claim 7, not Claim 1. That is, the Examiner is interpreting Claim 1 with respect to the teaching of Fig. 1. However, Claim 1 has been drafted to read on the embodiment of Fig. 2. Hence, it is unclear how the Examiner may properly reject Claim 1 on the basis of any purported similarities between Fig. 1 and the teachings of Parulski.

Second, it is not clear that the images are equivalent.

And third, assuming that the images are equivalent, the mere use of a subtractor in an embodiment of the invention coupled with equivalent images is not tantamount to a teaching of means for effecting pixel-by-pixel comparison as set forth in Claim 1.

Appellant respectfully submits that the Examiner's assertion that Parulski's steps of differencing, thresholding and filtering are not equivalent to pixel-by-pixel comparison as claimed. Hence, this basis for rejection is submitted as being improper and should be withdrawn.

Appellant is unable to understand and therefore unable to respond to the assertion that:

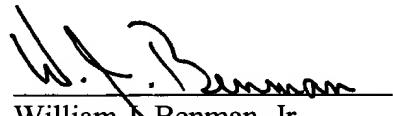
“At Table II (page 8 of the Brief), Appellant gives an example of a result of comparison used in Appellant’s application, which is exactly identical to the result of the foreground mask in Parulski’s figure 5.”

In any event, the second point to be noted is in regard to par. 11(3) of the Answer. Here, the Examiner suggests that Appellant’s template output by differentiator 26 is equivalent to Parulski’s foreground mask output from means 71 for applying a table threshold and concludes therefore that Parulski teaches the claimed means for differentiating the difference frame.

As noted in Appellant’s brief, this is the Examiner’s ‘result’ oriented test by which she suggests that regardless of the language of the claims, if the images can be said to look similar, the methods and systems used to create the images are not patentably distinct. That is, notwithstanding the fact that images may be created with a variety of techniques and systems, if the images can be said to be equivalent, the techniques and systems for creating the images are equivalent from the standpoint of patentability.

Inasmuch as this is not believed to be the test for patentability, Appellant respectfully submits that the Examiner's position is untenable and should be overturned. Accordingly, reconsideration of the final rejections, reversal of the rejections, allowance of the claims and passage of the subject application to issue are respectfully requested.

Respectfully submitted,



\_\_\_\_\_  
William J. Benman, Jr.  
Appellant

2049 Century Park East, Suite 2740  
Los Angeles, CA 90067

(310) 553-2400